

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

(1) STRYKER BIOTECH, LLC

(2) MARK PHILIP,

(3) WILLIAM HEPPNER,

(4) DAVID ARD and

(5) JEFFREY WHITAKER

Defendant

CRIMINAL NO. 09-CR-10330-GAO

**GOVERNMENT’S MOTION-IN-LIMINE TO EXCLUDE
EVIDENCE NOT PROVIDED AS REQUIRED
BY DEFENDANT’S DISCOVERY OBLIGATIONS
PRIOR TO SEPTEMBER 30, 2011**

Pursuant to Local Rule 116.1(D), within 28 days after arraignment, where defendants did not file a waiver of automatic discovery, the defendants must produce to the government all material described in Fed. R. Crim. P. 16(b)(1)(A) and (B). To date, the defendants have only produced disclosures relating to possible expert witness testimony under Fed. R. Crim. P. 16(b)(1)(C), which disclosures will be the subject of a separate motion to exclude. The government has requested that the defendants comply with their discovery obligations, including in the government’s automatic discovery letter dated November 29, 2009, and at various times thereafter. Except as set forth in the footnote below, defendants have not provided any material described in Fed. R. Crim. P. 16(b)(1)(A) and (B), as required by the rules.¹

¹After discussions with defendant Philip’s counsel, by letter dated June 6, 2011, Stryker Biotech provided certain additional documents regarding Count 16, bates-range SBSupp 00001 - 133, and by letter dated June 27, 2011, one further additional document, bates-range SBSupp 0000134-141. On July 6, 2011, the United States filed an assented-to motion to voluntarily dismiss Count 16 (pending against only defendant Philip) on which the Court has not yet ruled.

The government respectfully requests that the Court preclude defendants from introducing any material as exhibits or referring to material not produced to the government at trial in this matter if such material is not provided to the government on or before September 30, 2011.

CARMEN M. ORTIZ
United States Attorney

/s/ Susan Winkler
Jeremy Sternberg
Susan G. Winkler
Gregory Noonan
Assistant U.S. Attorneys

September 9, 2011

Rule 7.1 Certification

I hereby certify that I contacted defendants' counsel of record by e-mail on August 30, 2011 to ask their position on this motion, and in response to their request for additional time, gave them until September 8 close of business to respond. Counsel for defendants Ard, Whitaker, and Philip responded they oppose. Counsel for defendants Stryker Biotech and Heppner have not stated their position.

/s/ Susan Winkler
Susan G. Winkler
Assistant U.S. Attorney

Certificate of Service

I hereby certify that the foregoing documents filed through the ECF system will be sent electronically to counsel for each defendant who is a registered participant as identified on the Notice of Electronic Filing (NEF).

/s/ Susan Winkler
Susan G. Winkler
Assistant U.S. Attorney

September 9, 2011